

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GEORGE H. LARSEN,

Plaintiff,

vs.

CITY OF HENDERSON; a Nevada municipal corporation; JIM NORMAN, individually and as a representative of co-defendant City of Henderson; SALLY IHMELS, individually and as a representative of co-defendant City of Henderson; ROES, INC. I-V, and JOHN DOES I-X,

Defendants.

Case No.: 2:06-cv-00153-RLH-RJJ

ORDER

(Motion for Summary Judgment #25, ERRATA #26)

Before the Court is Defendants City of Henderson ("City"), Jim Norman ("Norman") and Sally Ihmels' ("Ihmels") **Motion for Summary Judgment** (#25, ERRATA #26), filed March 15, 2007. The Court has also considered Plaintiff George Larsen's Opposition (#30), filed April 19, 2007, and Defendants' Reply (#32), filed May 3, 2007.

BACKGROUND

At the time that the facts of this case occurred, Plaintiff was approximately 79 years old and frequented the Henderson Senior Center ("Center") in Henderson, Nevada. At the Center,

1 Plaintiff participated in bridge games, attended meetings concerning senior citizen issues, and was
 2 seemingly an active participant in the community. Following allegations of serious inappropriate
 3 conduct against Plaintiff by certain Center participants, specifics of which were not immediately
 4 made known to Plaintiff, the City informed him that an investigation was being conducted and that
 5 he was banned from the Center pending its completion.

6 Following the completion of the City's investigation, Defendant Norman, the
 7 Director of the Department of Parks and Recreation for the City, informed Plaintiff that the
 8 allegations against him included a sexual comment directed toward a Center participant and the
 9 inappropriate touching of another. No other details were outlined. For these actions, Plaintiff was
 10 suspended from the Center and all other City recreational facilities for one year.

11 After his suspension, Plaintiff sought additional details from Defendants
 12 concerning the incidents. Defendants refused and Plaintiff thereafter filed the instant litigation. At
 13 issue in the current Motion for Summary Judgment are Plaintiff's claims for violations of
 14 Nevada's open meeting law, defamation, intentional infliction of emotional distress, civil
 15 conspiracy and a § 1983 claim.

16 For the following reasons, the Court grants summary judgment in favor of
 17 Defendants on all causes of action except for Plaintiff's § 1983 claim. Additional relevant facts
 18 are outlined below.

19 DISCUSSION

20 I. Summary Judgment Standard

21 Summary judgment is proper when "the pleadings, depositions, answers to
 22 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
 23 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter
 24 of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is a sufficient evidentiary basis
 25 on which a reasonable fact finder could find for the nonmoving party, and a dispute is "material"
 26 only if it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby*,

1 *Inc.*, 477 U.S. 242, 248 (1986). The party moving for summary judgment has the burden of
 2 showing the absence of a genuine issue of material fact, and the court must view all facts and draw
 3 all inferences in the light most favorable to the non-moving party. *Blanck v. Hager*, 360 F. Supp.
 4 2d 1137, 1148 (D. Nev. 2005) (citations omitted).

5 In response to a properly submitted summary judgment motion, the burden shifts to
 6 the opposing party to set forth specific facts showing that there is a genuine issue for trial.
 7 *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055-56 (9th Cir. 2002). The non-moving party
 8 “may not rely on denials in the pleadings but must produce specific evidence, through affidavits or
 9 admissible discovery material, to show that the dispute exists.” *Bhan v. NME Hosp., Inc.*, 929 F.2d
 10 1404, 1409 (9th Cir. 1991).

11 **II. Motion for Summary Judgment**

12 Defendants move for summary judgment on the following causes of action: (1)
 13 violation of Nevada’s open meeting law; (2) defamation; (3) intentional infliction of emotional
 14 distress; (4) civil conspiracy; and (5) violation of civil rights under 42 U.S.C. § 1983. Plaintiff
 15 concedes the entry of summary judgment in favor of Defendants on his violation of the open
 16 meeting law and civil conspiracy claims. On the remaining causes of action, the Court grants
 17 summary judgment in favor of Defendants on Plaintiff’s intentional infliction of emotional distress
 18 and defamation claims and denies summary judgment on his § 1983 claim.

19 **A. Intentional Infliction of Emotional Distress**

20 The elements of an intentional infliction of emotional distress claim include: (1)
 21 extreme and outrageous conduct with either the intention of, or reckless disregard for, causing
 22 emotional distress; (2) severe or extreme emotional distress suffered by the plaintiff; and (3) actual
 23 or proximate causation. *Star v. Rabello*, 625 P.2d 90, 92 (Nev. 1981). Regarding the second
 24 element, where emotional distress damages are claimed in the absence of physical impact or
 25 injury, proof of serious emotional distress causing physical injury or illness must be presented.
 26 *Oliver v. Lowe*, 995 P.2d 1023, 1025 (Nev. 2000). Here, assuming *arguendo* that Defendants’

1 action in ousting Plaintiff from all City recreational facilities constituted extreme and outrageous
2 conduct and that it was the proximate cause of Plaintiff's suffering, the Court finds that Plaintiff
3 cannot show that his distress was either severe or extreme.

4 Following his banishment from City recreational facilities, Plaintiff affirms that on
5 the advice of his doctor about how to handle the stress he endured from the situation, Plaintiff left
6 town and visited a friend in Colorado to get away for a while. He admits that he received no
7 professional counseling or therapy for his distress and, medically, he continued taking the same
8 medications he had prior to the incident. Supporting Plaintiff's testimony is the affidavit of Joyce
9 Haas, Plaintiff's friend with whom he stayed in Colorado, who stated that Plaintiff "was frustrated,
10 nervous, agitated, and exhibited all the signs and symptoms of an individual under great stress."
11 (Opp'n, Haas Aff. at 2.) She further stated that "[t]he only therapy [she] could prescribe was to
12 forget about it and relax." (*Id.*)

13 While the evidence submitted in support of Plaintiff's claim indicates that he was at
14 least somewhat distressed about being ousted from all City recreational facilities, the Court finds
15 that it does not rise to the level of severe or extreme emotional distress. Plaintiff alleges in his
16 Complaint that Defendants' conduct aggravated and enhanced certain of his pre-existing physical
17 disabilities, yet contradicts the allegation in his affidavit by stating that he "monitored [himself]
18 and regulated essentially the same medication [he] had been taking for diabetes, pain, and
19 inflammation." (Opp'n, Larsen Aff. at 8.) Further, Haas's sworn statement that she told Plaintiff
20 to relax and forget about the situation suggests to the Court that not even she believed Plaintiff's
21 distress was severe or extreme. Plaintiff has not submitted any additional or alternative evidence
22 to show that he suffered severe emotional distress. *Miller v. Jones*, 970 P.2d 571, 577 (Nev. 1998)
23 (finding that plaintiff could not sustain his emotional distress claim where although he stated that
24 he was depressed for some time, he did not seek any medical or psychiatric assistance and
25 presented no objectively verifiable evidence of the severity of his distress).

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1 For these reasons, the Court enters summary judgment in favor of Defendants on
2 Plaintiff's intentional infliction of emotional distress claim.

3 **B. Defamation**

4 Under Nevada law, a plaintiff suing for defamation must establish: (1) a false and
5 defamatory statement of fact by the defendant concerning the plaintiff; (2) an unprivileged
6 publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or
7 presumed damages. *Pope v. Motel 6*, 114 P.3d 277, 282 (Nev. 2005). Defendants dispute that any
8 alleged defamatory statements were published or made.

9 First, Defendants argue that should the City's suspension letters constitute
10 defamatory statements, they were not published because they were not distributed to anyone
11 outside the City government. The Court agrees. Plaintiff has brought forth no evidence
12 contradicting this assertion and therefore the suspension letters cannot sufficiently support his
13 defamation claim. Second, the Parties dispute whether an alleged announcement made by a City
14 employee, Susan Bobby ("Bobby"), the Director of the Center, was defamatory. Defendants not
15 only dispute that the announcement was made, they further dispute that it was defamatory in
16 nature.

17 According to the declaration of Harold Winall ("Winall"), a Center participant who
18 alleges to have witnessed the announcement, Bobby entered the bridge room of the Center and
19 announced to all those present that an investigation into Plaintiff's conduct was being conducted
20 and that anyone with information should meet in the library. Winall states that though he does not
21 recall the exact language used, "there's no question but that they were looking for something
22 adverse." (Opp'n, Winall Decl. at 1.) In contrast, Bobby affirms that she never made a public
23 announcement but admits stating to certain individuals that if they needed to discuss anything
24 related to Plaintiff, Center officials were available for discussion. Moreover, Bobby denies that
25 she told the Center participants that an investigation was being conducted.

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1 Taking the allegations against Defendants as true for purposes of summary
 2 judgment, the Court finds that Bobby's alleged announcement of an investigation cannot be found
 3 defamatory by a reasonable jury. A statement is defamatory when it "tend[s] to lower the subject
 4 in the estimation of the community, excite derogatory opinions about the subject, and hold the
 5 subject up to contempt." *Pegasus v. Reno Newspapers, Inc.*, 57 P.3d 82, 88 (Nev. 2002). An
 6 investigation into a person's actions does not necessarily imply that some type of negative conduct
 7 occurred. A finding that an announcement of an investigation is defamatory in nature would
 8 effectively hinder an entity's, such as the City's, ability to carry out the investigation. While
 9 Winall declares that Bobby's announcement indicated that she was looking for "something
 10 adverse," Plaintiff does not allege that Bobby detailed the nature of the investigation to those
 11 present at the Center so as to allow those who heard the purported announcement to draw any
 12 negative inferences about Plaintiff. Thus, the announcement, if made, was not defamatory.

13 Accordingly, the Court enters summary judgment in favor of Defendants on
 14 Plaintiff's defamation claim.

15 **B. 42 U.S.C. § 1983**

16 Plaintiff brings a § 1983 claim for violations of his right to freedom of speech,
 17 freedom of association and due process against the City, and Norman and Ihmels in their official
 18 capacities. In the Court's earlier motion to dismiss Order (Dkt. #16), the Court found that
 19 Defendants' one year ban from all City recreational facilities could be found to have burdened
 20 Plaintiff's rights to freedom of speech and association because it prohibited all speech, regardless
 21 of content, and because it denied him physical access to all facilities, at all times, and for all
 22 purposes. Particularly, it stated that the restriction's duration was excessive and its scope not
 23 narrowly tailored because, for example, Defendants could have served the governmental interest in
 24 preventing Plaintiff from sexually harassing female bridge players by restricting Plaintiff from
 25 attending the bridge games only at the Center where the alleged incidents took place. In its current
 26 summary judgment motion, Defendants fail to address the Court's concerns about the perceived

1 excessiveness of these restrictions. While Defendants note that Plaintiff was invited to public
2 meetings and provided certain documents to Plaintiff, those limited efforts fail to address the full
3 scope of the restriction, as public meetings were just one activity among many from which
4 Plaintiff's access was restricted.

5 Similarly, Defendants fail to address the due process concerns raised by the Court
6 in the same Order. On this issue, the Court noted the City's lack of proper notice to Plaintiff
7 regarding the investigation, the lack of detail surrounding the alleged misconduct by Plaintiff, and
8 the denial of an opportunity for Plaintiff to be heard. Nowhere in Defendants' motion are these
9 issues addressed. For these reasons, the Court finds that Defendants have failed to meet their
10 summary judgment burden on Plaintiff's § 1983 claim and, accordingly, the Court denies summary
11 judgment on this cause of action.

12 CONCLUSION

13 Accordingly, and for good cause appearing,

14 IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment (#25,
15 ERRATA #26) is GRANTED in part and DENIED in part as follows:

16 1. GRANTED in favor of Defendants on Plaintiff's claims for violations of
17 Nevada's open meeting law, defamation, intentional infliction of emotional distress and civil
18 conspiracy.

19 2. DENIED on Plaintiff's § 1983 claim.

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21 Dated: June 7, 2007.

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24 **ROGER L. HUNT**
25 Chief United States District Judge
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